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EDITORIAL

Friends,

The CBDT issued circular 13 of 2022 dated 22.06.2022, detailed guidelines on the TDS rule for virtual digital assets (VDAs) such as cryptocurrencies and laid down the various scenarios under which tax would be applicable and on whom the onus of deduction would lie.

Let us understand the issues queries which have been clarified and the way forward on taxation of VDA which was introduced vide the Finance Act, 2022.

Definition of Virtual Digital Asset (VDA):

Sec 2(47A) of Income Tax Act,1961 defines VDA as –

- Information or code, etc
- Providing a digital representation of value
- Having inherent value

Section 194S- Legal Provisions:

Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to 1% of such sum as TDS.

Provided that in a case where the consideration for transfer of VDA is-

- wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or
- partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,

the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

Applicability of Section 203A and 206B

Sec 203A and 206AB shall not apply to a specified person – No TIN requirement/ No Higher Rate for non filing of returns

Exceptions

No TDS in a case, where-

- the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed Rs.50000/- during the financial year; or
- the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed Rs.10000/- during the financial year.

"specified person" means a person,-

- **Individual/ HUF** - whose total sales/ gross receipts/ turnover from the B/P does not exceed Rs.1 Cr/ Rs.50L, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;
- **Individual/ HUF** – With no PGBP Income

Remarks

- 194S prevails over 194O
- Where any sum referred to in 194S(1) is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

In light of **Circular 13 of 2022 dated 22.6.2022,** There are some important Clarifications which may have an impact going forward –

- Is VDA 'goods' – No Comments. As per information, The Central Economic Intelligence Bureau (CEIB) has proposed categorising cryptocurrencies as intangible assets and applying GST on all the crypto transactions. Since the government has not yet defined its taxability and the

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proposal is under discussion, a general rate of 18% may likely become applicable going forward.

- 194Q or 194S – 194S prevails
- TDS u/s 194S on "Gross including GST" or "Net excluding GST" - Net excluding GST
- TDS u/s 194S on "service charges on VDA" – No TDS u/s 194S on "service charges on VDA".

Various Case Scenarios

1. Transfer of VDA taking place on or through an Exchange and seller/broker owns the VDA –

- Exchange should deduct TDS incase Seller is the owner himself
- Exchange should deduct TDS incase broker is the owner of the VDA
- Incase broker is intermediary, then exchange/broker should deduct TDS as per their agreement
- Exchange has to report all these transactions in Form 26QF quarterly

2. Transfer of VDA taking place on or through an Exchange and Exchange owns the VDA –

- Primary responsibility of the Buyer to deduct TDS
- Exchange/broker may deduct TDS as per their agreement
- Exchange has to report all these transactions in Form 26QF quarterly & pay the tax before the return is filed

3. Incase payment is in kind/ in exchange of another VDA –

- TDS is by the 'person responsible for paying the consideration'.
- Payment has to be made only after 'proof pf payment' of TDS is received

4. "VDA A" for "VDA B" between peers

- TDS is by the 'person responsible for paying the consideration'
- Buyer of VDA A has to deduct TDS before transferring VDA B & Vice-versa
- Challan details and Form 26DF needs to be filled
- Specified persons need to fill Form 26QE

5. "VDA A" for "VDA B" through exchange –

- Exchange may deduct TDS as per their agreement
- Exchange to deduct TDS for 'both legs' of the transaction
- Exchange has to report all these transactions in Form 26Q quarterly & Pay the tax before the return is filed
- No liability of TDS on buyer/seller
- **Incase TDS is deducted in kind (Eg. 1% Monero for 1% Deso)** –
  - ❖ Trail to be maintained for 'non-primary VDA' TDS
  - ❖ Convert to 'primary VDA' immediately – which can be converted to INR
  - ❖ Time stamps of timing of orders to be maintained to ensure conversion of VDAs to be done immediately
- All TDS for 1 day (0:00 to 23:59)
- The accumulated balance of primary VDAs at 00.00 hours will be converted into INR based on the market rate existing at that time.
- Customer will be issued a contract note over email which will include the amount of tax withheld in kind under section 194S and the amount of INR realized from such tax withheld.
- There would not be any further TDS for converting the tax withheld in kind in the form of VDA into INR or from one VDA to another VDA and then into INR

6. Payment for VDA by 'payment gateways'. Whose liability for TDS?

- Liability for TDS is on the buyer
- Undertaking to be taken from the buyer that TDS amount has been deducted and paid the threshold would be applicable from 1st July 2022 for credits done or payments made

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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SYNOPSIS

TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
28th June	GSTR-11	May 2022	Return by persons with Unique Identification Number (UIN) like embassies etc. to get refund under GST for goods and services purchased by them for May.
30th June	26QAA	Q.E. March 2022	Quarterly return of non-deduction at source by banks from interest on time deposit for January-March quarter.
30th June	TDS Challan-cum-statement	May 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194 IB, 194M.

INCOME TAX

NOTIFICATION

U/S 280A(1) OF IT ACT 1961, CENTRAL GOVERNMENT, IN CONSULTATION WITH THE CHIEF JUSTICE OF THE HIGH COURT OF UTTARAKHAND

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 68/2022 dated 24.6.2022 notified In exercise of the powers conferred by sub-section (1) of section 280A of the Income-tax Act, 1961 (43 of 1961) and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), the Central Government, in consultation with the Chief Justice of the High Court of Uttarakhand, hereby designates the following Court in the State of Uttarakhand, as mentioned in column (2) of the Table below, as Special Court for the area specified in column (3) of the said Table for the purposes of section 280A of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, namely:-

TABLE

Serial Number	Court	Area
(1)	(2)	(3)
1	Chief Judicial Magistrate, Dehradun	Dehradun, Chamoli, Rudraprayag, Tehri Garhwal and Uttarkashi.
2.	Chief Judicial Magistrate, Haridwar	Haridwar and Pauri Garhwal
3.	Chief Judicial Magistrate, Nainital	Nainital, Almora, Bageshwar, Pithoragarh and Champawat
4.	Chief Judicial Magistrate, Udham Singh Nagar	Udham Singh Nagar

NOTIFICATION

INCOME TAX RULES AMENDED TO GIVE EFFECT THE SECTION 194S.

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 67/2022 dated 21.6.2022 notified the following rules further to amend the Income-tax Rules, 1962, namely:-

1. Short title and commencement.—

(1) These rules may be called the Income-tax (19th Amendment) Rules, 2022.

(2) Save as otherwise provided in these rules, they shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules),

(a) in rule 30, with effect from the 1st July, 2022—

(i) after sub-rule (2C), the following sub-rule shall be inserted, namely:—

"(2D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194S by a specified person referred to in that section shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QE.";

(ii) after sub-rule (6C), the following sub-rule shall be inserted, namely:—

"(6D) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QE, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2D) into the Reserve Bank of India r the State Bank of India or any authorised bank.";

(b) in rule 31, after sub-rule (3C), the following sub-rule shall be inserted with effect from the 1st July, 2022, namely:–

"(3D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3), every person, being a specified person referred to in section 194S and responsible for deduction of tax under that section shall furnish the certificate of deduction of tax at source in Form No.16E to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QE under rule 31A after generating and downloading the same from the web portal specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorised by him.";

(c) in rule 31A, with effect from the 1st day of July, 2022—

(i) in sub-rule (4), after clause (xvi), the following clause shall be inserted, namely:—

"(xvii) furnish particulars of amount deposited being prerequisite for releasing—

(a) winnings in terms of proviso to section 194B;

(b) benefit or perquisite in terms of first proviso to sub-section (1) of section 194R; and

(c) consideration in terms of proviso to sub-section (1) of section 194S along with the challan details such as BSR code of the bank, date of payment and challan serial number."

(ii) after sub-rule (4C), the following sub-rule shall be inserted, namely,—

"(4D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) of sub-rule (4), every specified person referred to in section 194S and responsible for deduction of tax under that section shall furnish to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), a challan-cum-statement in Form No. 26QE electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within thirty days from the end of the month in which the deduction is made.".

3. In the principal rules, in Appendix II, after Form No. 16D, the "Form 16E - Certificate under section 203 of the Income-tax Act, 1961 for tax deducted at source" shall be inserted with effect from the 1st July, 2022.

4. In the principal rules, in Appendix II, in form 26Q, with effect from the 1st day of July, 2022 —

(a) for the brackets, words, figures and letters "*[See sections 192A, 193, 194, 194A, 194B, 194BB, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194N, 194-O, 194P, 194Q, 197A, 206AA, 206AB and rule 31A]", the following brackets, words, figures and letters, shall be substituted, namely:—*

"[See sections 192A, 193, 194, 194A, 194B, 194BB, 194C, 194D, 194DA, 194EE, 194F, 194G, 194H, 194 -I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194N, 194-O, 194P, 194Q, 194R, 194S, 197A, 206AA, 206AB and rule 31A]";

(b) for the "Annexure"- DEDUCTEE/PAYEE WISE BREAK UP OF TDS, the "Annexure" notified shall be substituted.

5. In the principal rules, in Appendix II, for Form 26QB, the Form notified shall be substituted.

[For further details please refer the Notification]

CIRCULAR

GUIDELINES FOR REMOVAL OF DIFFICULTIES UNDER SUB-SECTION (6) OF SECTION 194S OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: Vide Circular 13/2022 dated 22nd June 2022, The Finance Act 2022 inserted a new section 194S in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st July 2022.

The new section mandates a person, who is responsible for paying to any resident any sum by way of consideration for

transfer of a virtual digital asset (VDA), to deduct an amount equal to 1% of such sum as income tax thereon. The tax deduction is required to be made at the time of credit of such sum to the account of the resident or at the time of payment, whichever is earlier.

This deduction is not required to be made in the following cases:-

(i) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year;

or

(ii) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year

The following are defined as specified person for the purposes of this provision:

(i) An individual or Hindu undivided family (HUF) who does not have any income under the head "profit and gains of business or profession"; and

(ii) An individual or HUF having income under the head "profits and gains of business or profession", whose total sales/gross receipts/turnover from business carried on by him does not exceed one crore rupee or in case of profession exercised by him does not exceed fifty lakh rupee. This threshold is to be seen in the financial year immediately preceding the financial year in which the VDA is transferred.

Sub-section (6) of section 194S of the Act authorises Central Board of Direct Taxes (CBDT) to issue guidelines, for removal of difficulties, with the approval of the Central Government. These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person responsible for paying the consideration for transfer of VDA.

Accordingly, in exercise of the power conferred by sub-section (6) of section 194S of the Act, CBDT hereby issues the following guidelines. These guidelines will apply only in cases where transfer of VDA is taking place on or through an Exchange. In other cases (like peer to peer and others) provisions of section 194S of the Act shall apply and so far as these guidelines are concerned clarifications provided only in Question 6 shall apply.

Guidelines

Question 1. Who is required to deduct tax when the transfer of VDA is taking place on or through an Exchange and payment is made by the purchaser to the Exchange (directly or through broker) and then from the Exchange it goes to seller directly or through the broker?

Answer: According to section 194S of the Act, any person who is responsible for paying to any resident any sum by way of consideration for transfer of VDA is required to deduct tax. Thus, in a peer to peer (i.e. direct buyer to seller) transaction, the buyer (i.e person paying the consideration) is required to deduct tax under section 194S of the Act.

However, if the transaction is taking place on or through an Exchange there is a possibility of tax deduction requirement under section 194S of the Act at multiple stages. Hence, in order to remove difficulties for transactions taking place on or through an Exchange, the following clarifications are issued:-

(i) In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by a person other than the Exchange: In this case buyer would be crediting or making payment to the Exchange (directly or through a broker). The Exchange then would be required to credit or make payment to the owner of VDA being transferred, either directly or through a broker. Since there are multiple players, to remove difficulty it is clarified that:

1. Tax may be deducted under section 194S of the Act only by the Exchange which is crediting or making payment to the seller (owner of the VDA being transferred). In a case where broker owns the VDA, it is the broker who is the seller. Hence, the amount of consideration being credited or paid to the broker by the Exchange is also subject to tax deduction under section 194S of the Act.

2. In a case where the credit/payment between Exchange and the seller is through a broker (and the broker is not seller), the responsibility to deduct tax under section 194S of the Act shall be on both the Exchange and the broker. However, if there is a written agreement between the Exchange and the broker that broker shall be deducting tax on such credit/payment, then broker alone may deduct the

tax under section 194S of the Act. The Exchange would be required to furnish a quarterly statement (in Form no 26QF) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962.

(ii) In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by such Exchange: In this case there are no multiple players. The buyer is required to deduct tax under section 194S of the Act. However, there may be a practical issue as the buyer may not know whether the VDA being transferred is owned by the Exchange or not. Hence, there may be genuine doubt in the mind of buyer with regard to its responsibility to deduct tax under section 194S of the Act. This difficulty would also be there if the buyer is buying VDA from an Exchange through a broker.

To remove this difficulty, it is clarified that while the primary responsibility to deduct tax under section 194S of the Act, in this case, remains with the buyer or his broker, as an alternative the Exchange may enter into a written agreement with the buyer or his broker that in regard to all such transactions the Exchange would be paying the tax on or before the due date for that quarter. The Exchange would be required to furnish a quarterly statement (in Form No. 26QF) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962. The Exchange would also be required to furnish its income tax return and all these transactions must be included in such return. If these conditions are complied with, the buyer or his broker would not be held as assessee in default under section 201 of the Act for these transactions.

For the purpose of this circular,-

(i) The term "Exchange" means any person that operates an application or platform for transferring of VDAs, which matches buy and sell trades and executes the same on its application or platform.

(ii) The term "Broker" means any person that operates an application or platform for transferring of VDAs and holds brokerage account/accounts with an Exchange for execution of such trades.

Question 2: Question no 1 was with respect to transactions where the consideration for transfer of VDA is not in kind. How will this operate in a situation where it is in kind or in exchange of another VDA?

Answer: According to proviso to sub-section (1) of section 194S of the Act, there could be situations where the consideration is in kind or in exchange of another VDA or partly in kind and cash is not sufficient to meet the TDS liability. In these situations, the person responsible for paying such consideration is required to ensure that tax required to be deducted has been paid in respect of such consideration, before releasing the consideration.

In the above situation, the buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g. Challan details etc.). In a situation where VDA "A" is being exchanged with another VDA "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus both need to pay tax with respect to transfer of VDA and show the evidence to other so that VDAs can then be exchanged. This would then be required to be reported in TDS statement along with challan number. This year Form No. 26Q has included provisions for reporting such transactions. For specified persons, Form No. 26QE has been introduced.

However, if the transaction is through an Exchange there is practical issue in implementing this provision. In order to address this practical issue and to remove difficulty, it is clarified that in such a situation, as an alternative, tax may be deducted by the Exchange. Such an alternative mechanism can be exercised by the Exchange based on written contractual agreement with the buyers/sellers.

If such an alternative mechanism is exercised,

(i) the Exchange would be required to deduct tax for both legs of the transactions and pay to the Government. In the Form 26Q it will, for the reasons explained before, need to report it as tax deducted on both legs of the transaction.

(ii) the buyer and seller would not be independently required to follow the procedure prescribed in proviso to sub-section (1) of section 194S of the Act.

When the Exchange opts for deduction of tax under section 194S of the Act on such transactions, there is also a possibility that the tax amount deducted is also in kind and needs to be converted into cash before it can be deposited with the Government. In this regard, the following mechanism shall be adopted by the Exchange

(i) At the time of transaction, the Exchange will deduct TDS in the pair being traded. For example, in case of trade for Monero to Deso, 1% of Monero and 1% Deso will be deducted as tax under section 194S of the Act by the Exchange and balance shall be transferred to the customer. The trail of transactions evidencing deduction of 1% of consideration for every VDA to VDA trade shall be maintained by the Exchange.

(ii) The Exchanges shall immediately execute a market order for converting this tax deducted in kind (1% Monero/ 1% Deso in the above example) to one of the primary VDAs (BT, ETH, USDT, USDC) which can be easily converted into INR. This step will ensure that the tax deducted under section 194S of the Act in the form of non-primary VDAs like Deso/Monero is converted to an equivalent of primary VDAs which have a ready INR market. Time stamps of timing of orders to be maintained to ensure such conversion of VDAs withheld to be done on immediate basis by the Exchange. If the taxes are withheld in primary VDAs, this step would be ignored.

(iii) All the tax deducted under section 194S of the Act in the form of primary VDAs {or converted into primary VDA under step (ii)} will be accumulated for the day. Time limit will be from 00:00 hours to 23:59 hours. VDA accumulation by the Exchange shall be verifiable from the trail of orders for VDA to VDA trades executed during the day.

(iv) The accumulated balance of primary VDAs at 00.00 hours will be converted into INR based on the market rate existing at that time. In order to bring in consistency and to avoid discretion, the Exchanges are required to place market order at 00:00 hours for the tax withheld {or converted under step (ii)} in form of primary VDAs for conversion into INR. These sell market orders shall be executed based on the open buy orders in the market. Price and quantity data for every matched trade shall be maintained by the Exchange and shall be available for verification. It shall be verifiable from the system coding that the conversion into INR happened at the first available buy order based on the prevailing buy order book of the respective Exchange at the time of conversion. As a practice, the respective Exchange liquidating the VDA shall be prohibited to be a buyer for these VDAs.

(v) Customer will be issued a contract note over email which will include the amount of tax withheld in kind under section 194S and the amount of INR realized from such tax withheld.

(vi) The tax withheld in kind under section 194S of the Act and converted into INR by following the above procedure shall be deposited in the Government Account as per the time line and process given in the Income-tax Rules 1962.

It is clarified that there would not be any further TDS for converting the tax withheld in kind in the form of VDA into INR or from one VDA to another VDA and then into INR.

Question 3: Whether the provision of section 194Q of the Act is also applicable on transfer of VDA?

Answer Without going into the merit whether VDA is goods or not, it is clarified that once tax is deducted under section 194S of the Act, tax would not be required to be deducted under section 194Q of the Act.

Question 4: Whether the consideration for transfer of VDA shall be on Gross basis after including GST/commission or it shall be on "net basis" after exclusion of these items.

Answer: In order to remove difficulty, it is clarified that the tax required to be withheld under section 194S of the Act shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.

Question 5: In transactions where payment is being carried out through payment gateways, there may be tax deduction twice. To illustrate that a person 'XYZ' is required to make payment to the seller for transfer of VDA. He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194S of the Act may fall on both "XYZ" and "ABC. Is tax required to be deducted by both?

Answer: In order to remove this difficulty, it is provided that in the above example, the payment gateway will not be required to deduct tax under section 194S of the Act on a transaction, if the tax has been deducted by the person ('XYZ') required to make deduction under section 194S of the Act. Hence, in the above example, if "XYZ" has deducted tax under section 194S of the Act on one lakh rupees, "ABC" will not be required to deduct tax under section 194S of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

Question 6: Section 194S shall come into effect from the 1st July 2022. The liability to deduct tax under section 194S of the Act applies only when the value or aggregate value of the

consideration for transfer of VDA exceeds fifty thousand rupees during the financial year in case of consideration being paid by specified person and ten thousand rupees in other cases. It is not clear how this limit of fifty thousand (or ten thousand) is to be computed?

Answer: It is clarified that,-

(i) Since the threshold of fifty thousand rupees (or ten thousand rupees) is with respect to the financial year, calculation of consideration for transfer of VDA triggering deduction under section 194S of the Act shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the consideration for transfer of VDA payable by a person exceeds fifty thousand rupees (or ten thousand rupees) during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194S of the Act shall apply on any sum, representing consideration for transfer of VDA, credited or paid on or after 1st July 2022.

(ii) Since the provision of section 194S of the Act applies at the time of credit or payment (whichever is earlier) of any sum, representing consideration for transfer of VDA, such sum which has been credited or paid before 1st July 2022 would not be subjected to tax deduction under section 194S of the Act.

[For further details please refer the Circular]

CASELAW

WRONGFUL AVAILMENT OF INPUT TAX CREDIT BY PROCURING INVOICES FROM FAKE AND FICTITIOUS FIRM SUPPLY OF GOODS WITHOUT PAYMENT OF TAX AND WITHOUT ISSUING INVOICE IS BAILABLE OFFENCE OR NOT: CHHATTISGARH HIGH COURT

OUR COMMENTS: Learned Senior Counsel for the applicant would submit that the applicant is innocent and has been falsely implicated. Due procedure has not been followed, as the offence triable is summons in nature. During investigation, all the necessary documents regarding business and trade of the applicant's firm were supplied to the concerned authorities, but were not considered in proper manner. She further submits that the offence under Section 138 of the Act is compoundable in nature and the offence up to the amount of Rs.5 crores, tax evasion is defined as bailable in character. Co-accused namely, Rohan Tanna and Abhishek Pandey have been granted bail by the co-ordinate Bench in MCRC Nos.6331/2021 and6692/2021, vide order dated 21 st December, 2021. The allegations relating to supply of goods without issuing invoices to the tune of Rs.27,70,559/- are false, as the tax has already been paid. Learned counsel further submits that the applicant's firm has been dealing with GST which was valid for all transactions, however, later on it has been cancelled. She further submits that no notice has been issued in compliance of Section 74 of the Act. All the necessary cooperation to the investigation has been extended and the offence is punishable maximum up to 5 years. The applicant is in jail since 27th October, 2021 i.e. for more than 9 months. She also submits that it is settled law that in criminal jurisdiction, presumption of innocence has to be presumed. It is further submitted that in the GST portal ,there is no system of cross-checking in their software for the traders who are wrongfully availing Input Tax Credit. As the earlier supplier has not paid the GST in proper manner, therefore, there is failure of mechanism in the GST Department and permitted wrong GST in number to the traders. She further submits that there is no need of custodial interrogation, therefore, the applicant may be released on bail.

It has been held that Considering the submissions of the parties, particularly considering the fact that the allegation against the present applicant is of wrongfully utilizing Input Tax Credit of Rs.6,95,32,472/- and supplied taxable goods without payment of taxes and without issuing invoices to the tune of Rs.27,70,559/-, totalling Rs.7,23,03,031/-, and that offence under the Act are bailable and non-cognizable except for the offence under Section 132 (5) of the Act, further considering that the applicant can be punished with maximum sentence of 5 years with fine, he is in jail since 27.10.2021, further considering that Proprietor of the firm namely, Rohan Tanna and Abhishek Pandey have already been enlarged on bail by the co-ordinate Bench and also considering that the applicant in the bail application raised a ground that the offence is compoundable in nature and, therefore, this Court after considering all the aspects of the matter, particularly the period of detention and the amount involved finds appropriate that if the applicant deposits Rs.70 lakhs under protest or admission of the disputed amount, which would be adjusted in accordance with law, the applicant can be enlarged on bail with the following conditions imposed.

Consequently, the Bail Application is allowed.

[For further details please refer the Case Law]

DISCUSSION

TRANSFER OF SHARE BY NON-RESIDENT TO NON-RESIDENTS OF INDIAN ENTITY

OUR COMMENTS: The SHARES of company either of a Public Ltd. Company or Private Company are part of Securities under Section 2(81); Section 44 and Section 58(2) and also states that securities are moveable property and are freely transferable. By this we get to know that Shares are transferable in nature.

Section 2(e) of FEMA 1999, states TRANSFER OF Shares and other form of Securities as- LEGALLY TRANSFERABLE CAPITAL ACCOUNT TRANSACTION. Few things are mentioned under the PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS by PERSONS WHO ARE RESIDENT OUTSIDE INDIA-

Investment in India- either in a Security issued by a body corporate or security issued by a company in India and investment made in it by a resident outside India. A person who is Resident outside India can transfer share in India as provided under FEMA or Rules and Regulations made under FEMA or with the permission of RBI. Provisions for Share transfer between Non- Resident to Non- Resident- Under Companies Act, 2013- Section 56 of The Companies Act, 2013 has to be followed which prescribes SH-4 Form has to be filed with the company whose shares are transferred. The insights of the form are entire summary of the share transfer along with every aspect of the agreement. It has to be filed within 60 days from the date of share transfer.

No other option is prevailing by which companies can record the share transfer and update the list of members. Under Stamp Act, 1899- Section 21 in accordance with Article 62 of Schedule 1 will into force under which a payment of duty will be required to be paid which amounts-Rs. 0.25 of every Rs. 100.

Under Foreign Exchange Management Act, 1999- If the Non- Resident is NRI or OCI then special permission will have to be taken by the RBI as per the Foreign Exchange Management Regulations, 2017. Prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires Government approval. Where the acquisition of capital instruments by an NRI or an OCI under the provisions of Schedule 3 of these regulations has resulted in a breach of the applicable aggregate NRI/ OCI limit or sectoral limits, the NRI or the OCI shall sell such capital instruments to a person resident in India eligible to hold such instruments within the time stipulated by Reserve Bank in consultation with the Central Government.

The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale, provided the sale is within the prescribed time, shall not be reckoned as a contravention under these Regulations. As per the regulations the price has to be fair and similar to the actual one being dealt locally.

A person resident in India holding capital instruments of an Indian company or units, or an NRI or an OCI or an eligible investor under Schedule 4 of these Regulations, holding capital instruments of an Indian company or units on a non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by Reserve Bank from time to time.

CUSTOMS

INSTRUCTION

RESTRICTIONS ON IMPORT OF PRODUCTS MADE OF PLASTIC

OUR COMMENTS: Vide Instruction No. 09/2022-Customs 22.06.2022 issued reg-Restrictions on import of products made of plastic, kind attention is invited to letter No. B-17011/7/UPC-II-PWM (MLP)/2021/12900 dated 01.02.2022 received from Ministry of Environment, Forest & Climate Change (MoEFCC) bringing into attention the changes in Plastic Waste Management Rules notified vide its Notification dated 12.08.2021 (G.S.R. 571 (E)) (copy enclosed) and Plastic Waste Management (Amendment) Rules, 2022 notified vide Notification dated 16.02.2022 (Copy enclosed).

2. The key changes in the notification dated 12.08.2021, relating to import are listed below:

(i) Rule 4(1)(c): *Carry bag made of virgin or recycled plastic, shall not be less than seventy-five microns in thickness with effect from the 30th September, 2021 and one hundred and twenty (120) microns in thickness with effect from the 31st December. 2022.*

(ii)Rule 4 (2): *The manufacture, import, stocking, distribution, sale and use of following single use plastic (SUP), including polystyrene and expanded polystyrene. commodities shall be prohibited with effect from the 1st July, 2022:*

(a) Ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks. polystyrene [Thermocol] for decoration.

(b) Plates, cups, glasses, cutlery such as forks. spoons, knives, straw, trays. wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 micron. stirrers.

(iii) Rule 4(3): *The provisions of sub-rule (2) (b) shall not apply to commodities made of compostable plastic.*

3. Further, Rule 6 of the Plastic Waste Management (Amendment) Rules, 2022 prescribes registration of importers of plastic packaging product or products with plastic packaging or carry bags or multi-layered packaging or plastic sheets, on a centralized portal developed by CPCB and Rule 7.3 prescribes extended producer responsibility and obligations of Importers.

4. It is requested that necessary action may be taken to sensitize officers under your jurisdiction regarding the above-mentioned prohibitions and restrictions with respect to import of items made of plastic.

5. The difficulties, if any, may be brought to the notice of the Board.

[For further details please refer the Instruction]

NOTIFICATION

CUSTOMS BROKERS LICENSING (AMENDMENT) REGULATIONS, 2022

OUR COMMENTS: Vide Notification 52/2022-Customs (ADD) dated 24.6.2022, the Central Board of Indirect Taxes and Customs, hereby makes the following regulations to amend the Customs Brokers Licensing Regulations, 2018, namely:-

1. **Short title and commencement.** –

(1) These regulations may be called the Customs Brokers Licensing (Amendment) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Customs Broker Licensing Regulations, 2018, -

(i) in Regulation 20, for sub-regulations (1) and (2), the following sub-regulations shall respectively be substituted, namely:-

"(1) Each Customs Broker shall enroll himself as a member of the Customs Brokers' Association at every jurisdiction he operates, if there is such an Association registered in the Customs Station, where the Customs Broker is operating and recognised by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(2) No Customs Broker shall enroll himself in more than one Association, at a given time, in a particular jurisdiction.";

(ii) after regulation 20, the following regulation shall be inserted, namely: -

"**21. Power to relax**.– Where an applicant or a Customs Broker or NACIN makes a representation to the Board that he or it, as the case may be, is unable to comply with his or its duties or obligations within the time period as specified under any provision of these regulations, for the reasons beyond his or its control, but otherwise satisfy all other conditions, if any, as provided under such provision, the Board may, after consideration of the representation, and for reasons to be recorded in writing, allow a further time period for compliance of such duties or obligations.".

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN IMPORT POLICY CONDITION OF WATER MELON SEEDS UNDER ITC(HS) CODE 1207 70 90 OF CHAPTER-12 OF ITC (HS), 2022, SCHEDULE-I

OUR COMMENTS: Vide notification number 13/2015-20 dated 21st June, 2022 the Director General of Foreign Trade In exercise of powers conferred by Section 3 and section 5 of FT (D&R) Act, 1992. read with paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP) 2015-2020, as amended from time to time, the Central Government hereby amends the policy condition under ITC (HS) 1207 70 90 of Chapter 12 of ITC (HS) 2022, Schedule 1 (Import Policy) as under:

ITC(HS) Code	Description	Existing Import Policy	Revised Import Policy	Existing Policy Condition	Revised Policy Condition
12077090	Melon Seeds - Other	Restricted	Restricted	Imports subject to Policy Condition (4) of the Chapter.	i. Imports subject to Policy Condition (4) of the Chapter. ii. Import Policy of Water Melon Seeds is "Free" till 30.09.2022 iii. Shipments of Water Melon Seeds made by 30.09.2022 from the exporting countries may be allowed for clearance at Indian Customs port, provided that Bill of Entry is filed and such goods are handed over to the Customs authority for examination by 31.10.2022 iv. The imports of Water Melon Seeds shall be permitted from Kandla (INIXY1) and Mundra (INMUN1) Ports only.

Effect of this Notification : Import of Water Melon Seeds falling under ITC(HS) code 12077090 is 'Free' till 30.09.2022. Given import shall be allowed from Kandla (INIXY1) and Mundra (INMUN1) Ports only.

[For further details please refer the Notification]

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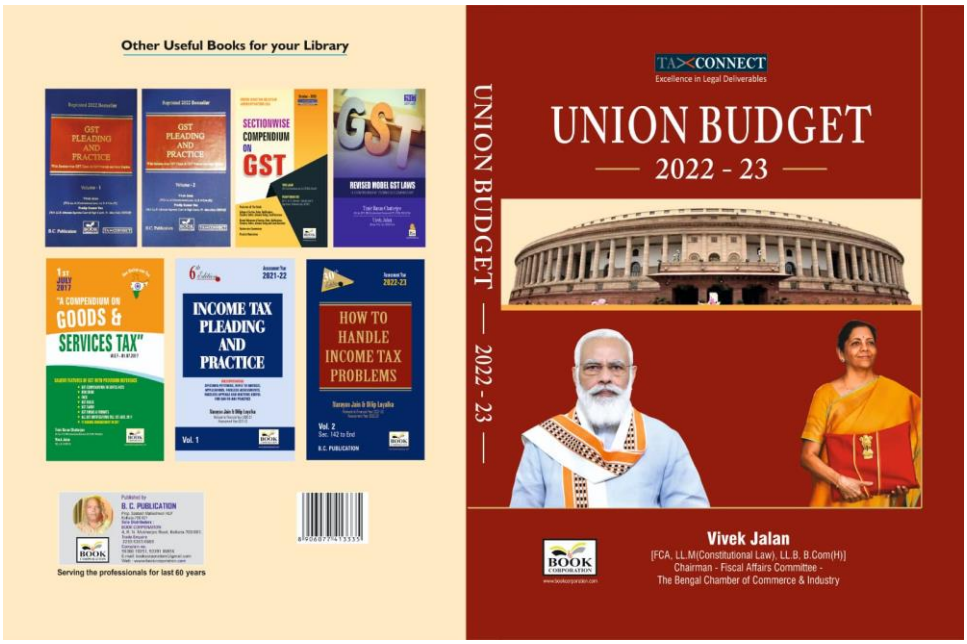
UNION BUDGET 2022-23



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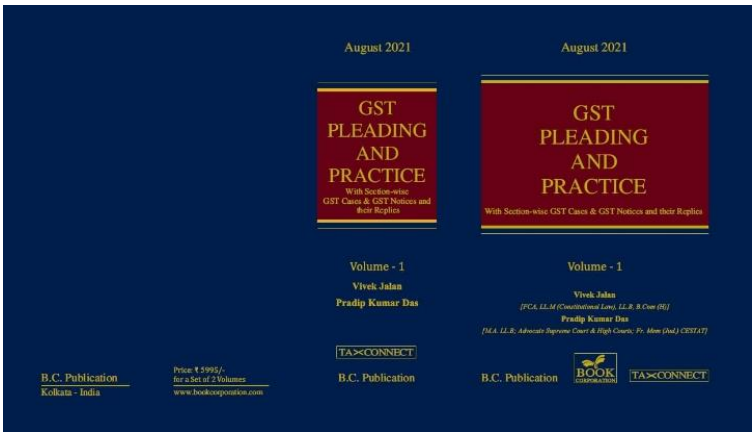

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